

File No. 04-1000-20-2016-432

November 25, 2016

s.22(1)

Dear s.22(1)

Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am responding to your request of November 17, 2016 for:

Any third party analysis or reports done on the Brenhill Development land swamp and the city owned property located at 508 Helmcken Street, as reported here: <http://www.straight.com/news/437991/brenhill-developments-and-constance-barnes-rejoice-over-bc-court-appeal-ruling-yaletown>, as well as the costs of this analysis.

All responsive records are attached. Please note that the included Brenhill Land Swap report by Ernst and Young is considered the final version despite the draft watermark.

Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2016-432); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at foi@vancouver.ca if you have any questions.

Yours truly,

Cobi Falconer, FOI Case Manager, for
Barbara Van Fraassen

Barbara J. Van Fraassen, BA
Director, Access to Information
City Clerk's Department, City of Vancouver

A handwritten signature in black ink, appearing to read 'Cobi Falconer', written in a cursive style.

Encl.

:kt



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ey.com

City of Vancouver
Legal Department
453 12th Avenue W
Vancouver, BC V5Y 1V4

23 February 2015

Attention: Francie Connell
City Solicitor

Re: Engagement Letter – Land Transaction

Dear Sirs:

This engagement letter, together with any attachments (collectively, the "**Agreement**") sets forth the terms and conditions on which Ernst & Young Inc. ("**EY**") has been engaged by the City of Vancouver, Legal Department, (the "**Client**" or the "**Company**") to provide certain professional services and legal advice (the "**Services**").

Background

The Client is seeking an independent third party opinion in respect of a transaction that originated in the Spring of 2012 and was consummated in the Fall of 2012 involving the Client and Brenhill Developments Ltd. ("**Brenhill**"). Specifically, the transaction involved a swap of land tracts for further and future development bearing civic addresses of 508 Helmcken (the Brenhill Lands) and 1099 Richards (the Client Lands) (the "**Transaction**"). The Transaction further contemplated, *inter alia*, the foregoing:

- Rezoning of one of the land tracts (the Brenhill Lands) subject to the transaction to permit the intended development;
- Issuance of a development permit by the Development Permit Board to permit the construction of a new social housing facility comprising approximately 162 units (replacing the Jubilee House comprising 87 units) on the Client Lands. Such facility to be constructed by Brenhill and delivered to the Client (to the satisfaction of the Client) prior to the commencement of further development of the residential and commercial lands (described below); and
- The construction of a mixed use high rise tower having a floor space ratio ("**FSR**") of 17.1.

Subsequent to the Transaction, the Community Association of New Yaletown brought an action before the Supreme Court of British Columbia (the "**Court**") challenging the adequacy of the public process on a number of grounds, including as related to the disclosure of information by the Client.

On January 27, 2015, the Court made a finding that, *inter alia*, the public hearing process was inadequate and thereby quashed the rezoning of Brenhill's proposed tower on the Brenhill Lands and cancelled a development permit for a 162-social housing building on the Client Lands.



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The Client is now undertaking certain actions to address the findings of the Court.

Services

Based on the above noted background and discussions with you, we understand the scope of services to be undertaken by EY, include the following:

Phase I – Procedural Review

- Review all materials in the possession of the Client to comment on the reasonableness of the decision making process pertaining to the Transaction followed by the Client having regard to, *inter alia*:
 - The calendar period in which the transaction originated and was consummated;
 - Materials available to, prepared by, and/or devolved upon the agents of the Client engaged in the review and decision making process;
 - Materials available to City Counsel and others, including in-camera presentations, for purpose of approving the transaction; and
 - The process followed by the Client in seeking the input of the public.

Phase II – Transaction Economics Review

- An assessment of value arising from the Transaction in favour of each of the Client and Brenhill having regard to, *inter alia*:
 - The value of the swapped lands;
 - The economic value associated with the incremental increase in social housing units;
 - The economic value associated with the rezoning of the Brenhill Lands;
 - Between the following calendar periods:
 - October 2012 – the approximate time period at which the Transaction was consummated; and
 - February 2015 – the period during which the rezoning process for the Brenhill Lands and the Development Permit Board process for the Client Lands will be resumed to address the findings of the Court.

During the course of our engagement circumstances may cause the scope of our work to change. Where appropriate, we will change our scope of our work based upon instructions by the Client or our professional judgment.



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The Services are advisory in nature. We shall exercise due professional care and competence in the performance of the Services. The Client shall make all management decisions and perform all management functions related to the Services, including: (i) determining whether the Services are appropriate for your purposes; (ii) determining the scope of activities to be performed by EY (iii) assigning competent personnel to oversee and assist in the completion of the Services; (iv) evaluating the findings and results arising from the Services, and (V) determining the actions by management, if any, necessary to respond to such findings and results. EY will not employ nor act as employer of the Client's employees, nor will it take possession of any of the Client's property.

EY may rely upon information provided to it and will not be independently verifying it for accuracy or completeness. Without limitation, the Services will not constitute (a) an audit, review or examination of financial statements in accordance with generally accepted auditing standards; or (b) an examination of prospective financial statements in accordance with applicable professional standards. The Services will not include any procedures to test compliance with the laws or regulations of any jurisdiction and none of the Services or any reports will constitute a legal opinion or legal advice.

The Client shall provide EY with timely and complete access to accurate information and such management personnel, premises, and professional advisors as are required by EY to perform the Services. Without limitation, the Client shall be required to keep EY completely advised on an up-to-date basis of all developments that may in any way impact on EY's analysis and understanding of the Client's business and its relationship with all of its stakeholders.

Reporting

EY shall report directly to the Client in the format requested by the Client. The Services and any reports, advice or other communications of any kind provided to Client in any form (written or otherwise) during the course of this engagement ("**Reports**") are intended solely for the information and benefit of the Client and shall be subject to the protections afforded by law.

No Report (and no portion, summary or abstract thereof) may be disclosed to any third party without EY's prior written consent. In the event we do so consent the third party in question would be required to first sign an access letter substantially in the form provided by EY. However, Client may disclose any Reports to its external legal advisors who require access in order to advise Client, provided such legal advisors: (i) are informed that any use they may choose to make of any Reports is entirely at their own risk and that EY shall have no responsibility to them whatsoever in relation to any such use, and (ii) agree to maintain the Reports in confidence. It is acknowledged by EY that Reports may be provided to China Investment Corp, which disclosure shall be subject to the prior consent of EY, which consent shall not be unreasonably withheld.

Contacts

Your primary contact at EY for these Services will be Mr. Kevin Brennan. EY will report to, and take instruction from, Ms. Francie Connell, City of Vancouver, City Solicitor, unless and until otherwise advised.

EY shall be entitled to consult such external experts as it deems necessary, including legal counsel and appraisers. The cost of any such external experts shall be borne by the Client. It is



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acknowledged by the Client that EY will engage the services of Burgess, Cawley, Sullivan & Associates Ltd. to assist in the completion of the Services.

Fees/remuneration

The Company shall pay EY's fees for the Services based on time spent by the relevant professionals in performing the Services, on the basis of actual time spent at hourly rates normally charged by it for this type of work. In addition, EY will be reimbursed for such disbursements properly and reasonably incurred by EY to carry out this engagement. It is understood that EY will endeavour to minimize time charges with respect to this engagement and to conduct the engagement in as cost-effective a manner as possible.

EY's hourly rates for this engagement are:

	Cdn\$
Senior Vice President	\$550 to \$625
Vice President	\$425 to \$495
Manager	\$275 to \$325
Staff Accountant	\$175 to \$225

In addition to the professional hourly rates set out above, Client shall reimburse EY for all expenses incurred in connection with the performance of the Services. The costs of administrative expenses such as printing, photocopies, telephone, facsimile, courier, and administrative support will be billed to Client at 5% of EY's professional fees. Reasonable and customary out-of-pocket expenses for items such as travel, meals, accommodations and other expenses specifically related to this engagement will also be charged. The fees and expenses set out above do not include any applicable taxes or duties.

EY's fees, expenses and any applicable taxes will be invoiced periodically as time and expenses are incurred. Accounts are due when rendered and interest accrues at 12% per annum on balances unpaid after 30 days. EY may suspend performance of the Services in the event Client fails to pay its account.

Working for other clients

The Client agrees that this engagement will not prevent or in any way restrict EY or other members of the global Ernst & Young network from providing professional services from time to time to any other person or entity.

Other terms and conditions

To the fullest extent permitted by law, Client shall indemnify and hold EY, its personnel and agents harmless from and against any and all liabilities, losses, damages, costs and expenses (including, without limitation, legal fees and disbursements) suffered or incurred by them related to or arising out



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of this engagement, except to the extent solely and directly caused by the fraud or wilful misconduct, gross negligence or violation of governing law of EY, its personnel or agents.

The attached General Terms and Conditions form an integral part of this Agreement. However, in the event of any conflict the body of this engagement letter has precedence.

Please sign this letter in the space provided below to indicate your agreement with these arrangements and return it to Kevin Brennan so that we may begin work.

Yours very truly,

ERNST & YOUNG INC.

Per:

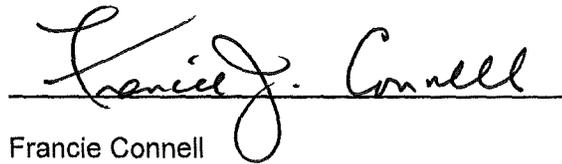


Kevin Brennan
Senior Vice-President

Acknowledged and agreed:

City of Vancouver (Legal Department)

Per:



Francie Connell
City Solicitor

I have the authority to bind the Client

Encl:

- ▶ General terms and conditions



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General terms and conditions

- **EY network.** EY is a member of the global network of Ernst & Young firms ("EY Firms"), each of which is a separate legal entity. EY may, subject to the prior consent of the Company, subcontract portions of the Services to other EY Firms, as well as to other service providers, who may deal with Client directly. Nevertheless, EY alone will be responsible to Client for any Reports, the performance of the Services, and EY's other obligations under this Agreement.
- **Responsibilities.** Client will provide EY with timely access to the information, personnel and assistance EY requires in order to perform the Services. All information provided to EY shall be accurate and complete, to the best of Client's knowledge. Unless otherwise expressly agreed, EY will rely on information provided to it without independently verifying accuracy or completeness. EY will use all reasonable efforts to complete the Services within any agreed time-frames (but EY will not be liable for delays that are beyond its control). Client shall make all management decisions related to the Services, including determining whether the Services are appropriate for its purposes.
- **Reports.** Any information, advice, recommendations or other content of any reports, presentations or other communications EY provides under this Agreement ("**Reports**") are for Client's internal use. Client may not disclose a Report (or any portion or summary of a Report) to any third party, except as noted in the foregoing provisions of this Agreement, or refer to EY or to any other EY Firm in connection with the Services, except with EY's prior written consent or to the extent a Report contains Tax Advice (as defined below). Reports are not intended to be relied upon by any third party. Client may not rely on any draft Reports.
- **Tax Advice.** Client may disclose to anyone a Report (or a portion thereof) solely to the extent that it relates to tax matters, including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate ("Tax Advice"). With the exception of tax authorities, Client shall inform those to whom it discloses Tax Advice that they may not rely on it for any purpose without EY's prior written consent.
- **Notice re: Québec.** From time to time, EY personnel performing the Services may include members of the *Ordre des comptables professionnels agréés du Québec ("l'Ordre des CPA")*. Any individual member of the *Ordre des CPA* performing professional services hereunder assumes full personal civil liability arising from the practice of his or her profession, regardless of his or her status within EY's organization. He or she may not invoke the liability of EY's organization as a ground for excluding or limiting his or her own liability. The limitations that follow below shall therefore not apply to limit the personal civil liability of members of the *Ordre des CPA* (and with respect to such members, such limitations shall be deemed to not be included in this Agreement).
- **Limitation of liability; Indemnity.** EY's total aggregate liability arising out of or relating to this Agreement or the Services, whether in contract or tort (including negligence), under statute or otherwise, shall be limited to the total fees paid to EY for the Services. The preceding limitation will not apply to fraud, wilful misconduct, gross negligence or violation of governing law or to the extent prohibited by applicable law or professional regulations. Client may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or the subcontractors, members, shareholders, directors, officers, partners, principals or employees of EY or of any other EY Firm ("EY Persons"). Client shall make any claim or bring proceedings only against EY. Client agrees to indemnify and hold EY, the other EY Firms and the EY Persons harmless from and against any claims made by third parties related to their use of, or reliance upon, Reports (including Tax Advice). The other EY Firms and all EY Persons shall be entitled to rely on and enforce this paragraph.
- **Confidentiality; Personal information.** EY treats all client information as confidential, subject only to applicable law and professional or regulatory requirements. EY may however provide client information (including personal information) to other EY Firms and our respective service providers in order to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, to provide technology or administrative services, or for quality, risk management or financial accounting purposes. EY, other EY Firms and our respective service providers may process, transfer and store client information (including personal information) outside of Canada. Client is responsible for obtaining any required privacy consents. EY's Canadian privacy policy is available at www.ey.com/ca.



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- **Miscellaneous.** Either party may terminate this Agreement for any reason, upon written notice. Client shall pay EY for time and expenses incurred up to the effective termination date. This Agreement shall be governed by and construed in accordance with Ontario law, without regard to conflicts of law principles. The parties submit to the exclusive jurisdiction of Ontario courts in connection with any dispute, claim or other matter arising out of or relating to this Agreement or the Services. Neither party may assign this Agreement. This Agreement may not be modified except in writing. This Agreement constitutes our entire agreement and supersedes all prior representations and agreements (including any confidentiality agreements). Any portion of this Agreement that is found to be invalid, illegal or otherwise unenforceable shall be severed to the minimum extent required and the remainder of the Agreement shall remain in effect. Provisions of this Agreement that by their nature operate beyond the term of this Agreement shall survive any termination and the completion of the Services, including limitations of liability, indemnities and confidentiality.



Ernst & Young Inc.
Vancouver, British Columbia

Invoice

Private & Confidential

Invoice Number: CA0189935574

Date: May 11, 2015

Ms. Francie Connell
City of Vancouver
453 West 12th Avenue
Vancouver, V5Y 1V4
Canada

Remit To:

P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5

A/R Queries :
416-943-3851
1-800-311-1104

Client Reference: 18331226

Re: COV Brenhill Developments Ltd. - Land Transaction

For professional services rendered up to April 15, 2015

	CAD
Fees (details attached)	126,011.00
Expenses (details attached)	149.27
Administrative Charge (@ 5%)	6,300.55
Subtotal:	132,460.82
GST 5%:	6,623.04
TOTAL DUE:	\$ 139,083.86

A member of Ernst & Young Global

Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice.
Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R123425522 **QST:** 1006354498

Wire transfer instructions:
Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP,
Transit #2411 Account #24111000237, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3; Reference the name & address of remitter,
invoice number & engagement number



COV Brenhill Developments Ltd.
Billing Details up to April 15, 2015
Invoice #CA0189935574 dated May 11, 2015

Billing Analysis

Client Reference: 18331226

<u>Staff Name</u>	<u>Hours</u>	<u>Billing Rate</u>	<u>Amount</u>
Kevin Brennan Senior Vice President	80.6	\$625.00	\$50,375.00 ↙
Matteo Maccio Senior Manager	79.8	\$495.00	\$39,501.00 ↙
Eleena Marley Senior Manager	73.0	\$495.00	\$36,135.00 ↙
	<u>233.4</u>		<u>\$126,011.00</u> ↙
Add: Expenses (details attached)			149.27
Administrative Charge (@ 5%)			6,300.55 ↙
			<u>\$132,460.82</u> ↙
Add: GST (@ 5%)			6,623.04 ↙
TOTAL			<u><u>\$139,083.86</u></u> ↙



COV Brenhill Developments Ltd.
Time Details up to April 15, 2015
Invoice #CA0189935574 dated May 11, 2015

Person	Date	Hours	Description
Brennan, Kevin	17-Feb-2015	1.2	Land swap transaction review - COV
Brennan, Kevin	24-Feb-2015	2.2	Prep work
Brennan, Kevin	25-Feb-2015	1.6	Mtg at COV
Brennan, Kevin	26-Feb-2015	6.2	Mtg at City / review of documents
Brennan, Kevin	27-Feb-2015	2.2	Prep for Mike Mtg
Brennan, Kevin	02-Mar-2015	5.5	Documents
Brennan, Kevin	03-Mar-2015	4.9	Attendance at meeting Jerry Evans / sourcing supporting docs / reviewing documents and analysis
Brennan, Kevin	04-Mar-2015	5.3	Mtg Sandra / attendance at City review documents
Brennan, Kevin	05-Mar-2015	6.9	Outline matters / review of documents / discussions with third parties / mtg with Cawley
Brennan, Kevin	06-Mar-2015	5.7	Prep of outline / amendments to outline post mtg / attendance at meeting with Bill and Jerry
Brennan, Kevin	09-Mar-2015	3.1	Analysis
Brennan, Kevin	10-Mar-2015	3.7	Report and analysis
Brennan, Kevin	11-Mar-2015	2.8	Analysis / numerous mtgs and calls
Brennan, Kevin	12-Mar-2015	2.6	Analysis
Brennan, Kevin	13-Mar-2015	6.6	Numerous calls with COV / numerous mtgs with COV / analysis / calls with appraiser
Brennan, Kevin	16-Mar-2015	3.2	Report
Brennan, Kevin	18-Mar-2015	1.3	Mtg with Kerr's
Brennan, Kevin	18-Mar-2015	2.9	Analysis
Brennan, Kevin	19-Mar-2015	2.8	Report
Brennan, Kevin	24-Mar-2015	5.1	Report amendments and final
Brennan, Kevin	25-Mar-2015	0.5	Follow up
Brennan, Kevin	30-Mar-2015	0.6	Call with legal / call with Sandra
Brennan, Kevin	01-Apr-2015	2.7	Mtg with COV
Brennan, Kevin	01-Apr-2015	0.7	Update report
Brennan, Kevin	02-Apr-2015	0.3	Report meeting
		80.6	
Maccio, Matteo	03-Mar-2015	4.2	Review COV Final Planning
Maccio, Matteo	04-Mar-2015	5.7	Reviewing files related to CAC/Approvals of Additional Density and Brenhill Soft Cost Budget Report & Altus Group Hard Construction Cost Peer Review
Maccio, Matteo	05-Mar-2015	5.6	Reviewing files related to CAC/Approvals of Additional Density and Brenhill Soft Cost Budget Report & Altus Group Hard Construction Cost Peer Review
Maccio, Matteo	06-Mar-2015	1.0	Meeting with Sandra Cawley
Maccio, Matteo	06-Mar-2015	3.6	Drafting Preliminary report
Maccio, Matteo	10-Mar-2015	2.8	Review COV Final Planning
Maccio, Matteo	10-Mar-2015	2.4	Drafting Preliminary report
Maccio, Matteo	11-Mar-2015	3.3	Drafting Preliminary report
Maccio, Matteo	11-Mar-2015	3.7	Reviewing files related to Mitigation Factors, Variances
Maccio, Matteo	12-Mar-2015	5.1	Reviewing files related to Mitigation Factors, Variances
Maccio, Matteo	13-Mar-2015	5.2	Review of Sandra Cawley files
Maccio, Matteo	13-Mar-2015	2.5	Drafting Preliminary report
Maccio, Matteo	17-Mar-2015	2.1	Review COV Files
Maccio, Matteo	17-Mar-2015	4.1	Drafting Preliminary report
Maccio, Matteo	18-Mar-2015	2.3	Review COV Files
Maccio, Matteo	18-Mar-2015	4.1	Drafting Preliminary report



Person	Date	Hours	Description
Maccio,Matteo	19-Mar-2015	2.0	Meeting Sandra Cawley
Maccio,Matteo	19-Mar-2015	3.7	Drafting Preliminary report
Maccio,Matteo	20-Mar-2015	4.5	Drafting Preliminary report
Maccio,Matteo	25-Mar-2015	3.9	Drafting Preliminary report
Maccio,Matteo	31-Mar-2015	4.2	Drafting Preliminary report
Maccio,Matteo	08-Apr-2015	3.8	Drafting Preliminary report
		79.8	
Marley,Eleena	25-Feb-2015	1.5	Client meetings and engagement kick-off
Marley,Eleena	26-Feb-2015	5.8	Client meetings and engagement kick-off
Marley,Eleena	02-Mar-2015	6.7	Document review, data capture, by-law review and report drafting
Marley,Eleena	04-Mar-2015	4.5	Document review, data capture, by-law review and report drafting
Marley,Eleena	05-Mar-2015	7.2	Document review, data capture, by-law review and report drafting
Marley,Eleena	09-Mar-2015	7.3	Progress meetings, research, by-law review, preliminary and final report drafting
Marley,Eleena	10-Mar-2015	4.9	Progress meetings, research, by-law review, preliminary and final report drafting
Marley,Eleena	11-Mar-2015	5.6	Progress meetings, research, by-law review, preliminary and final report drafting
Marley,Eleena	12-Mar-2015	6.8	Progress meetings, research, by-law review, preliminary and final report drafting
Marley,Eleena	16-Mar-2015	3.7	Report drafting
Marley,Eleena	17-Mar-2015	3.8	Report drafting
Marley,Eleena	18-Mar-2015	4.2	Report drafting
Marley,Eleena	19-Mar-2015	6.7	Report drafting
Marley,Eleena	23-Mar-2015	1.3	Prelim report
Marley,Eleena	24-Mar-2015	1.4	Prelim report
Marley,Eleena	08-Apr-2015	1.6	Report review
		73.0	
TOTAL		233.4	



COV Brenhill Developments Ltd.
Expense Details up to April 15, 2015
Invoice #CA0189935574 dated May 11, 2015

Person/Vendor	Date	Amount	Description
Brennan, Kevin	25-Feb-2015	11.00	Mass Trans:
Brennan, Kevin	02-Mar-2015	17.31	Parking:
Brennan, Kevin	06-Mar-2015	5.50	Mass Trans:
Brennan, Kevin	27-Mar-2015	73.56	Parking:
Brennan, Kevin	01-Apr-2015	11.00	Mass Trans:
		118.37	
Marley, Eleena	26-Feb-2015	2.75	Mass Trans:
Marley, Eleena	26-Feb-2015	2.75	Mass Trans:
Marley, Eleena	02-Mar-2015	2.75	Mass Trans:
Marley, Eleena	02-Mar-2015	2.75	Mass Trans:
Marley, Eleena	04-Mar-2015	9.95	Parking:
Marley, Eleena	05-Mar-2015	9.95	Parking:
		30.90	
TOTAL		\$149.27	

